

EXHIBIT 2

1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 CARLOS FLORES, LAWRENCE BARTLEY,
 EDGARDO LEBRON, ANTONIO ROMAN,
 5 DEMETRIUS BENNETT, L'MANI DELIMA,
 DONTAE QUINONES, and SHAROD
 6 LOGAN, on behalf of themselves and all
 Others similarly situated,

7 Plaintiffs,

8 -against-

CASE NO.

18-CV-02468 (VB) (JCM)

9 TINA M. STANFORD, as Chairwoman of
 the New York State Board of Parole;
 10 and WALTER W. SMITH, as Commissioner
 of the New York State Board of Parole;
 11 JOSEPH P. CRANGLE, as Commissioner of
 the New York State of Parole; ELLEN
 12 E. ALEXANDER, as Commissioner of the
 New York State Board of Parole; MARC
 13 COPPOLA, as Commissioner of the New
 York Board of Parole; TANA AGOSTINI,
 14 as Commissioner of the New York State
 Board of Parole; CHARLES DAVIS, as
 15 Commissioner of the New York State
 Board of Parole; ERIK BERLINER, as
 16 Commissioner of the New York State
 Board of Parole; OTIS CRUSE, as
 17 Commissioner of the New York State
 Board of Parole; TYECE DRAKE, as
 18 Commissioner of the New York State
 Board of Parole; CARYNE DEMOSTHENES, as
 19 Commissioner of the New York State
 Board of Parole; MICHAEL CORLEY, as
 20 Commissioner of the New York State
 Board of Parole; CHANWOO LEE, as
 21 Commissioner of the New York State
 Board of Parole; SHEILA SAMUELS, as
 22 Commissioner of the New York State
 Board of Parole; ELSIE SEGARRA, as
 23 Commissioner of the New York State
 Board of Parole; and CARLTON
 24 MITCHELL, as Commissioner of the New
 York State Board of Parole,

25 Defendants.

1 (continued from page 1)

2
3 VIDEOTAPE DEPOSITION OF
4 ELLEN ALEXANDER
5 VIA ZOOM VIDEOCONFERENCE

6 October 15, 2021

7 9:00 a.m.

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9 * * *

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11 Remote videotape deposition of
12 Ellen Alexander, held virtually via
13 Zoom Teleconference, hosted from
14 Veritext Legal Solutions, pursuant to
15 notice, before Maureen Ratto, Certified
16 Court Reporter, License No. XI01165,
17 Registered Professional Reporter,
18 License No. 817125, and Notary Public.

19
20 * * *

1 ELLEN ALEXANDER

2 laws, regulations and case law and I use
3 my understanding of that to try and
4 define those terms but, you know, these
5 terms are terms of art. I know they
6 possibly are used in other statutes
7 around the country. I can't cite them but
8 these are terms of art. Some of them are
9 difficult to define. So I could tell you
10 that I think there is discretion built
11 into the system, a tremendous amount of
12 discretion built into the system.

13 Q. Okay. Now, you mention that
14 when you look at the factors and you were
15 looking at -- when you say "factors", are
16 you referring to I through 8, little i(c)
17 -- little i through 8, are those the
18 factors that you are referencing?

19 A. Yes. They're easier to read in
20 the regulation and the statute but
21 they're pretty much the same.

22 Q. Okay. Are you required to give
23 any particular weight to any one of those
24 eight factors?

25 A. No, we are not.

1 ELLEN ALEXANDER

2 Q. Are there any factors beyond
3 this list that you understand you are
4 required by law to consider?

5 A. Well, certainly the class that
6 we look at now, I am required to look at
7 other factors for those individuals.

8 Q. When you say "the class", are
9 you talking about the juvenile lifers?

10 A. Yes. Yes.

11 Q. So for that cohort for
12 juvenile lifers there are additional
13 factors that you are required to
14 consider?

15 A. Yes. Yes.

16 Q. What are those factors?

17 A. Well, the factors are listed
18 in 8002.2(c), the guiding principles, and
19 I would look at those.

20 Q. Okay. Do you have discretion
21 to weigh those factors -- give those
22 factors any weight you so choose?

23 A. I believe, yes. I certainly
24 have to consider them, but the statute
25 didn't tell me how much weight to give

1 ELLEN ALEXANDER

2 them but I have to consider them, I
3 believe.

4 Q. Okay. So for clarity of the
5 record, let's mark 8002.2, tab 3, please
6 and we can put it on the screen for just
7 a minute so we know we're talking about
8 the same thing.

9 (Alexander Exhibit 2, copy of
10 8002.2 Parole Release
11 Decisionmaking was received and
12 marked on this date for
13 identification.)

14 Q. This should be in your marked
15 exhibits folder and I think you have in
16 front of you anyway; is that right, Ms.
17 Alexander?

18 A. That is correct.

19 Q. Okay. So when we talk about
20 the additional factors you must consider
21 for juvenile lifers, is that (c) here
22 where it says Minor Offenders, are those
23 the factors that you must take into
24 account?

25 A. Yes. I mean, they are called

1 ELLEN ALEXANDER

2 -- in the text they're called guiding
3 principles, but I believe because it
4 references back to the Executive Law that
5 I must consider them, I must consider the
6 diminished capacity and culpability and I
7 must really look at the growth and
8 maturity since that time.

9 Q. Okay. And can those -- those
10 things are essentially treated the same
11 as the other factors that we just looked
12 at, right?

13 A. In my mind, yes.

14 Q. So you can give no weight to,
15 for example, the diminished culpability
16 of youth; is that right?

17 A. No. I wouldn't say no weight.
18 I have to give it some weight but it's in
19 my discretion to determine what weight.

20 Q. Okay. Is it within your
21 discretion to accord no weight to any of
22 the factors?

23 A. In my mind, personally, that
24 is not an option for me.

25 Q. So all the factors get some

1 ELLEN ALEXANDER

2 could make you question whether the
3 person has been rehabilitated.

4 Q. What type of knowledge?

5 A. Well, if it's a family member
6 or they have reached out while they have
7 been in prison or have participated in
8 something that, you know, is
9 extraordinary that would leave the victim
10 with discreet knowledge that
11 rehabilitation is not complete.

12 Q. So they would have to have
13 more contemporaneous knowledge, not about
14 the crime -- you're referring to
15 contemporaneous knowledge about the
16 offender?

17 A. I would say that's --

18 Q. Okay.

19 A. -- much more factual and
20 necessary. But if something happened
21 nine years ago and the person is up for
22 the minimum on a nine to life sentence,
23 that victim may have information which
24 may be more time relevant. I don't know.
25 I'm just talking in generalities. I am

1 ELLEN ALEXANDER

2 not talking about specifics.

3 Q. Okay. May you under the
4 statute deny release to a juvenile lifer
5 even if that person demonstrates maturity
6 and rehabilitation subsequent to their
7 crime?

8 A. I believe I have the ability
9 to do that, yes.

10 Q. And have you done that? It's
11 okay.

12 A. I don't know. I don't -- I
13 don't know.

14 Q. Is it ever appropriate to deny
15 parole based the seriousness of the crime
16 alone?

17 A. I don't think so.

18 Q. Is the standard -- I know the
19 standard has to undermine respect for the
20 law. But in your understanding of the
21 standard would it essentially be the same
22 if it said release would deprecate the
23 seriousness of the crime? Functionally,
24 are those the same things?

25 A. It can be functionally the

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2 same thing. I think as a society we want
3 to strive that people respect our laws,
4 because I think it's an important
5 societal norm. So I think those phrases
6 should be linked. I'm not sure I answered
7 that as crisply as I should have.

8 Q. I'm trying to figure out what
9 work respect for the law is doing, given
10 that we have no surveys or any
11 information about broadly public -- to
12 inform us about whether release would
13 undermine respect for the law. So what
14 work is that doing in this -- in this
15 standard? Is it essentially just for
16 extra verbiage? Is it the same thing as
17 deprecate the seriousness of the crime?

18 MR. HARBEN: Object to form.

19 A. I think seriousness -- I read
20 it more holistically, that I want people
21 to have respect for our laws and I think
22 the more serious the crime is and more
23 heinous the crime is, if it's not
24 recognized in some way, I think it does
25 undermine our societal fabric. So I think

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2 sensitive to but I didn't have the
3 regulations or some of the knowledge I
4 have now to back it up.

5 Even from my earliest cases,
6 you know, I dealt with people who were,
7 let's say 40-years-old and committed a
8 crime when they were 17 or 18, and they
9 grew up in prison and I tended to look at
10 what happened there. But has my practice
11 evolved since 2012? Absolutely.

12 Q. Okay. Who is this mentor you
13 referenced?

14 A. Christina Hernandez.

15 Q. What did it mean to you when
16 she said someone grew up in prison? How
17 is that relevant to your analysis?

18 A. I think it was code for me to
19 start exploring their growth and maturity
20 and what had changed for them in prison.
21 I mean, it wasn't as clear as the
22 diminished culpability of youth or
23 measuring the growth and maturity, but it
24 was delving a principle that I held dear
25 to my questioning and decisionmaking.

1 ELLEN ALEXANDER

2 Q. Okay. Do you know whether the
3 U.S. Constitution imposes any obligations
4 on you with respect to parole decisions
5 for juvenile lifers?

6 MR. HARBEN: Objection, calls
7 for a legal conclusion.

8 A. I have a general sense that
9 there have been U.S. Supreme Court cases.
10 I understand that someone should not be
11 given a life sentence without the
12 opportunity for parole as a minor. I
13 think there has maybe been some cutback
14 with that on the conservative court but I
15 have used my principles not really on
16 what the U.S. Supreme Court has said but
17 what has been codified in regulation here
18 as determined by Hawkins.

19 Q. Okay. So are you familiar with
20 the legal case Graham V Florida?

21 A. I know the name. I'm not
22 intimately familiar with it. It's been
23 many many years since I've read it.

24 Q. Okay. What about Miller versus
25 Alabama?

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2 A. Same answer. I remember the
3 name but I don't know the exact holdings.

4 Q. Okay. And what about
5 Montgomery versus Louisiana?

6 A. That would be the same answer.

7 Q. Okay. Do you recall receiving
8 any training or guidance on
9 constitutional standards when you were
10 appointed to the board?

11 A. Constitutional in terms of all
12 releases?

13 Q. No. In terms of juvenile
14 lifers.

15 A. When I was appointed?

16 Q. Yeah.

17 A. No, I don't recall that.

18 Q. Okay. Did you ever?

19 A. We had training after Hawkins
20 came down.

21 Q. Okay. How did you come to
22 learn that the Hawkins decision had come
23 down?

24 A. I believe legal counsel
25 advised us.

1 ELLEN ALEXANDER

2 Q. Okay. What is your
3 understanding of what Hawkins requires of
4 you as a commissioner?

5 A. It requires us to examine the
6 person at the time they were an offender
7 when they were young, to go through their
8 family and work and school history and
9 whether they were influenced by people
10 who were older; did they have an intact
11 family? We're they subject to other sorts
12 of pressures of being a follower and
13 having a lack of structure? And then,
14 more importantly in my mind, is to
15 measure that's used to see whether they
16 can appreciate the risk perhaps or why
17 the crime took place? But to me it's
18 always the flip side which needs to be
19 explored; since that time have they
20 developed the growth and maturity to not
21 be that person they were at 16 or 15; do
22 they appreciate the risk; do they
23 appreciate the harm?

24 Q. So the inquiry into family and
25 work and school is intended to assess

1 ELLEN ALEXANDER

2 follow the rules. That's a mature
3 teenager.

4 Q. Okay.

5 A. They still may not appreciate
6 all the risks or be able to fully assess
7 it because their brain hasn't fully
8 assessed, but they're clearly more mature
9 than someone who has not taken care of
10 their parents or they're individuals who
11 are roaming the streets. So there is a
12 distinction there for me to form a
13 starting ground.

14 Q. I understand how this is
15 relevant to your evaluation of current
16 maturity in rehabilitation from the
17 starting point. But are you -- are you
18 saying that when you evaluate a teenager
19 who committed a crime and at the time of
20 the crime they were doing things like
21 taking care of younger siblings and
22 exhibiting responsibility, that that
23 person, because they were able to be
24 responsible to take care of their younger
25 sibling, is also more culpable for their

1 ELLEN ALEXANDER

2 crime because they're more mature than
3 someone who is the same age but not
4 exhibiting those responsible
5 characteristics?

6 A. I would say as a general
7 principle, maybe yes. It's sort of like
8 your earlier question about the
9 difference between a 13-year-old and a
10 17-year-old. I'm just trying to gauge
11 where they were.

12 Q. Okay. How did you come to the
13 understanding that Hawkins requires you
14 to make these inquiries into family, work
15 and school life?

16 A. Memo from legal counsel and
17 training.

18 Q. Do you try to follow the
19 advice of counsel?

20 A. I do.

21 Q. Do you follow the advice of
22 counsel in drafting parole decisions,
23 denials and grants?

24 MR. HARBEN: Object to form.

25 A. I don't exactly know what you

1 ELLEN ALEXANDER

2 mean. I'm sorry.

3 Q. Do you follow -- has counsel
4 ever given you advice on how to draft a
5 parole decision to comply with the law?

6 MR. HARBEN: Object to form.

7 A. I've had discussions with
8 legal counsel because I have a background
9 as being an inhouse counsel. So I may
10 have a higher level of respect of the
11 role that they play in the organization
12 and I enjoy talking to them and trying to
13 do a better job.

14 I'm not sure I'm answering
15 your question.

16 Q. I'm asking, do you generally
17 follow the advice of counsel?

18 A. I do. I do.

19 Q. Okay.

20 A. But obviously I come to this
21 job with my own sense of self and worth
22 and I try and weave everything together.

23 Q. We looked at earlier a
24 provision of the statutory law that
25 requires you to render your decisions in

1 ELLEN ALEXANDER

2 MR. HARBEN: Object to form.

3 A. First of all, I need to accept
4 the verdict as a Parole Commissioner.

5 Q. Okay. Can you accept a verdict
6 and also accept that the person might not
7 have any recollection of ever having
8 committed the crime?

9 A. Both can be true, yes.

10 Q. Okay. Right. So if they don't
11 ever recollect committing the crime, it
12 would hard to provide insight into a
13 crime that they don't ever remember
14 having committed, right?

15 A. I think that's a logical
16 truism, yes.

17 Q. Okay. Well, Mr. Pedersen died
18 in custody so you won't have to address
19 him.

20 All right. I'd like to go to
21 talk a little bit about your application
22 of risks and needs and COMPAS.

23 Kathryn can you pull up tab 7,
24 please?

25 (Alexander Exhibit 8,

1 ELLEN ALEXANDER

2 flowchart of Parole Board process
3 was received and marked on this
4 date for identification.)

5 Q. While we're waiting for that,
6 Commissioner Alexander, do you have --
7 were you ever provided a manual for
8 essentially how to conduct your job?

9 A. A manual? I don't believe so.
10 I mean, we did have extensive training
11 when I first joined the board.
12 Commissioner Sharkey, Commissioner
13 Coppola and I, you know, had training
14 with Mr. Tracey, who was the board
15 counsel. We talked to other
16 commissioners.

17 I don't remember the material
18 that we had and I'm actually moving out
19 of my house and have gotten rid of all
20 that material. So I don't know what I
21 reviewed.

22 Q. Okay. Do you have a binder
23 potentially called a Commissioner Binder
24 that contains instructive information for
25 you?

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2 A. We have a binder that was
3 provided to us by counsel. That wasn't
4 when I started. That was a more recent
5 initiative, I guess.

6 Q. Okay. Do you recall the year
7 that you were provided that binder?

8 A. I don't. I know it was when
9 new commissioners came on, so it would
10 either be 2017 or 2019, but I don't
11 recall which date that happened. I have
12 always -- I've always done my own
13 research and kept statutes and
14 regulations with me so I can refer to
15 them and memos from attorneys without
16 anybody providing me with anything.

17 Q. Okay. I'd like to turn to page
18 ending 5688 of this binder. Sorry. This
19 is some tabs from a Commissioner Binder.

20 Do these look familiar to you?
21 I know the pages are all redacted but
22 does this look familiar to you, this
23 flowchart?

24 A. It doesn't ring a bell with
25 me, but I wouldn't deny that I have seen

C E R T I F I C A T E

I, MAUREEN M. RATTO, a
Registered Professional Reporter, do
hereby certify that prior to the
commencement of the examination, ELLEN
ALEXANDER was sworn by me to testify
the truth, the whole truth and nothing
but the truth.

I DO FURTHER CERTIFY that the
foregoing is a true and accurate
transcript of the proceedings as taken
stenographically by and before me at
the time, place and on the date
hereinbefore set forth.

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor
attorney nor counsel of any of the
parties to this action, and that I am
neither a relative nor employee of such
attorney or counsel, and that I am not
financially interested in this action.



MAUREEN M. RATTO, RPR

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